

INFORMATION PAPER

SUBJECT: The Survivor's Benefit Plan (SBP) Annuity and Imminent Death Processing

PURPOSE: To explain the impact of section 642 of The National Defense Authorization Act for FY 2004 (NDAA) and the sequent DOD Memorandum on SBP and Imminent Death Processing

1. Survivor Benefit Plan:

a. Section 645 of the NDAA expanded Section 1448(d), 10 USC, to provide a Survivor Benefit Plan (SBP) annuity for the surviving dependent children of a member who dies while on active duty but is not yet eligible for retirement. Under the 2004 NDAA, the Service Secretary, in consultation with the surviving spouse, determines whether a "child only" election is appropriate. Prior to this change, a dependent child could only receive the SBP annuity when there was no surviving spouse or when a surviving spouse subsequently died.

b. Additionally, NDAA expanded Section 1448(d)(2), 10 USC, to provide a SBP annuity to dependent if there is no eligible surviving spouse. Prior to this change, the children would receive the annuity only if the surviving spouse died but not when the surviving spouse remarried.

c. NDAA, Section 645(b) invalidated the election of supplemental survivor benefit plan for those members retired under the imminent death procedures or for medical disability, if the member died within one year of retirement from the disability for which the member was retired. Since imminent death processing was only appropriate when "competent medical authority determines that a Service member's death is expected within 72 hours,"¹ the principal reason for processing a service member under the imminent death procedures no longer exists.

2. Imminent Death Processing: As a result of several provisions in the NDAA, the Department of Defense has issued a memorandum directing that imminent death processing shall no longer be undertaken.²

¹ DoD Instruction 1332.38, Physical Disability Evaluation, sub-paragraph E3.P1.6.4.

² Mr. Charles S. Abell, Principal Deputy, Office of the Under Secretary of Defense signed a memorandum on 23 December 2003 that expresses this policy change. Sub-paragraph E3.P1.6.4 of DoDI 1332.38 is hereby rescinded. Revisions to the new DODI will reflect this change.

3. Legal assistance attorneys are still required to advise the next of kin when a "child only" election under the SBP may be more advantageous for the surviving spouse and family. In advising the next of kin, you should consider the following:

- a. Spousal SBP ceases on remarriage before age 55.
- b. Spousal SBP is offset by DIC and this offset in some cases results in no SBP annuity.
- c. Child only SBP is not offset by DIC.
- d. While each situation must be analyzed individually, generally in cases where the DIC will offset the spousal SBP annuity and there are eligible children, or where there is a young surviving spouse who is likely to remarry before age 55 and there are young children, making the "child only" election will result in more money for the family during the initial years following the service member's death.

4. Procedures for obtaining Secretarial approval: The Secretary of the Army has delegated the authority to make the "child only" election to the Retirement Services Office. Personnel in the Retirement Services Office will also counsel the surviving spouse on the benefits available under SBP and whether a "child only" election may be appropriate.

5. Legal assistance attorneys should understand the issues involved and be prepared to assist the casualty assistance officer or the surviving spouse when these issues arise.

Major Cheryl Kellogg

Now if you are on active duty, regardless of whether you are retirement eligible, you are covered under SBP if you die on active duty, in the line of duty. The beneficiaries are statutory but the surviving spouse can elect child only coverage (which might be advantageous because of the spousal DIC offset). If you are not in the line of duty and have 20 years of service, you are covered under the SBP but the base amount for purposes of calculating the annuity is impacted. If you are not in the line of duty and do not have 20 years - there is no SBP.

(1) The SBP annuity is 55% of the soldier's retired pay "entitlement," as if the soldier had been retired for total disability (i.e., using a 75% multiplier). The exception is the case of a retirement-eligible soldier who dies under LOD-No conditions, in which case the multiplier is derived from actual years/months of service.

(2) LOD determinations affect the annuity as follows:

* Retirement-Eligible; LOD-Yes: Final Pay (or high-36) X 75%;
Retired
Pay "entitlement" X 55% (or 35%) = SBP Annuity.
* Retirement-Eligible; LOD-No: Final Pay (or high-36) X multiplier
based on years/months of service (e.g., 20 years = 50%); Retired Pay
"entitlement" X 55% (or 35%) = SBP Annuity.
* NOT Retirement-Eligible; LOD-Yes: Final Pay (or high-36) X 75%;
Retired Pay "entitlement" X 55% (or 35%) = SBP Annuity
* NOT Retirement-Eligible; LOD-No: No SBP Annuity Payable!

Although there may be some benefits that one would be eligible for if
retired that are not available under current law (e.g. 20,000 SGLV
insurance), DOD policy is that the services will no longer do imminent
death processing. I attached the DOD memorandum to that effect.